No. 86-235

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM 1986

JOHN B. BELL,

Petitioner,

—vs.—

THE STATE OF NEW YORK, NEW YORK LAW SCHOOL, KRAMER, LEVIN, NESSEN, KAMIN & FRANKEL, ESQS., MICHAEL B. REUBEN, individually,

Respondents,

—and—

ANDREA LIKWORNIK, individually.

BRIEF OF RESPONDENTS NEW YORK LAW SCHOOL, KRAMER, LEVIN, NESSEN, KAMIN & FRANKEL, AND MICHAEL B. REUBEN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

HAROLD P. WEINBERGER
(*Counsel of Record*)

MICHAEL B. REUBEN
KRAMER, LEVIN, NESSEN, KAMIN
& FRANKEL
919 Third Avenue
New York, New York 10022
(212) 715-9100

Attorneys for Respondent
New York Law School and
Attorneys Pro Se

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Respondents,

- and -

ANDREA LIKWORNIK, individually.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents New York Law School (the "Law School"), Kramer, Levin, Nessen, Kamin & Frankel and Michael B. Reuben (collectively, "Kramer

Levin") submit this brief in opposition to the pro se petition of John B. Bell for a writ of certiorari to the United States Court of Appeals for the Second Circuit. The State of New York (the "State") is also a respondent, but has waived response.[1/]

Petitioner, a would-be lawyer, graduated from the Law School in June 1983 and has been suing it ever since. After losing a contract suit against the Law School in the state courts of New York, petitioner commenced this federal "civil rights" action alleging that the state court decisions against him were erroneous; that the State had violated his constitutional rights because its courts rendered those decisions; and that the Law School and its counsel (Kramer Levin) had conspired to obtain the decisions by knowingly offering inadmissible evidence and incorrect legal arguments, in violation of 42 U.S.C. § 1985.

1/ An additional party named in the caption, Andrea Likwornik, was never served in this action, did not appear in any proceeding below, and is not a respondent in this Court.

Both the District Court and the Court of Appeals found petitioner's claims to be frivolous. The District Court dismissed the complaint and awarded respondents their attorneys' fees under 42 U.S.C. § 1988. The Court of Appeals affirmed, assessing double costs and further attorneys' fees against petitioner under Rule 38 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 1912. Undaunted, petitioner would have this Court consider the same baseless claims, even though the legal arguments he raises as a pretext for review were neither at issue nor ruled upon in the courts below. Because the petition does not identify any error in the decisions actually rendered or the reasoning actually applied below, it should be denied.

POINT ONE

THE PETITION DOES NOT RAISE ANY ISSUE DECIDED BY THE COURTS BELOW, AND, IN ANY CASE, THOSE DECISIONS ARE CORRECT

As to the Law School and Kramer Levin, petitioner would have this Court decide two issues:[2/]

First, he contends that the District Court, when it dismissed the complaint, should not have awarded attorneys' fees to Kramer Levin because Kramer Levin was proceeding as attorneys pro se. But here as before the Court of Appeals, petitioner simply refuses to acknowledge the undisputed fact that Kramer Levin has litigated this action from the beginning on behalf of a client: the Law School. Petitioner's decision to include the Law School's

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2/ Although the State has forgone response, we note in passing that petitioner's challenge to the District Court's dismissal of his complaint against the State was not raised in the Court of Appeals. Accordingly, the Court of Appeals had no occasion to rule on petitioner's novel theory of Sovereign Immunity.

attorneys as additional defendants in no way removed the Law School's need to be represented by counsel or to pay counsel fees. The District Court, which held that the complaint was frivolous and pursued for harassment (App. 22), properly awarded those fees to the Law School and Kramer Levin as prevailing parties under 42 U.S.C. § 1988. The Court of Appeals affirmed in accordance with its previous decisions.[3/]

Second, petitioner contends that his complaint against the Law School and Kramer Levin should not have been dismissed as res judicata under the Full Faith and Credit Statute, 28 U.S.C. § 1738. The short answer is that the District Court did not dismiss the complaint on that basis, and that the Court of Appeals affirmed for reasons wholly apart from any issue of res judicata.

3/ As indicated by the Court of Appeals' citation to Eastway Construction Corp. v. City of New York, 762 F.2d 243, 254 (2d Cir. 1985), the fee award against petitioner was equally sustainable under Rule 11 of the Federal Rules of Civil Procedure.

As the Court of Appeals recognized in its affirmance, the complaint was dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to allege (i) class-based discriminatory animus -- an essential element of a claim under 42 U.S.C. § 1985, e.g., Griffin v. Breckinridge, 403 U.S. 88 (1971); and (ii) facts constituting a conspiracy. (App. 2)[4/] Not one word in the Court of Appeals' decision (or in the District Court's) even addressed the issue of res judicata.

In short, petitioner has established neither a ground nor a need for this Court to review the decision below. The petition should be denied.

4/ The District Court also held that the present action constituted an impermissible attempt to relitigate final state court proceedings under the guise of a federal civil rights suit. (App. 17, 22) The rule against such relitigation is "well-settled." Hagerty v. Succession of Clement, 749 F.2d 217, 220 (5th Cir. 1984), cert. denied, 106 S. Ct. 333 (1985); see also id., 106 S. Ct. at 333 (Burger, C.J., concurring in denial of certiorari).

POINT TWO

BECAUSE THE PETITION IS FRIVOLOUS AND HAS BEEN FILED SOLELY TO HARASS RESPONDENTS, PETITIONER SHOULD BE SANCTIONED

Rule 49.2 of this Court provides that

> [w]hen an appeal or petition for writ of certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages.

Where the judicial process has been grossly abused, this Court has not hesitated to award such damages. See Hatch v. Reliance Insurance Co., 106 S. Ct. 782 (1986); Hyde v. Van Wormer, 106 S. Ct. 403 (1985); Tatum v. Regents of the University of Nebraska, 462 U.S. 1117 (1983). This is such a case.

Petitioner, who has a law degree, has conducted what the Court of Appeals called an "obdurate pursuit of patently meritless claims" against the Law School and its counsel. (App. 2) Petitioner himself conceded in the District Court that these claims were not viable. (See App. 8) When he nevertheless

continued to press them, the District Court found that the action was maintained for harassment. The Court of Appeals agreed. Despite well-established precedent, stern rebukes from four federal judges, and the imposition on two occasions of monetary penalties, petitioner insists on burdening both respondents and this Court with a petition for certiorari pressing the same frivolous claims. That is a gross abuse of the judicial process, and it fully merits sanction.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

Harold P. Weinberger
(Counsel of Record)

Michael B. Reuben

Kramer, Levin, Nessen, Kamin & Frankel
919 Third Avenue
New York, New York 10022
(212) 715-9100

Attorneys for Respondents
New York Law School and
Attorneys Pro Se